

OPEN MEETING ITEM



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COMMISSIONERS
KRISTIN K. MAYES - Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

ORIGINAL



RECEIVED Executive Director

ARIZONA CORPORATION COMMISSION

2010 SEP 30 P 2:04

AZ CORP COMMISSION
DOCKET CONTROL

DATE: SEPTEMBER 29, 2010

DOCKET NO.: SW-04026A-01-0499

TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Teena Jibilian. The recommendation has been filed in the form of an Order on:

BENSCH RANCH UTILITIES, LLC
(AMEND DECISION NO. 67180)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and thirteen (13) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

OCTOBER 12, 2010

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Open Meeting to be held on:

OCTOBER 19, 2010 and OCTOBER 20, 2010

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Director's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

SEP 30 2010

DOCKETED BY	
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ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

1200 WEST WASHINGTON STREET, PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET, TUCSON, ARIZONA 85701-1347

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This document is available in alternative formats by contacting Shaylin Bernal, ADA Coordinator, voice phone number 602-542-3931, E-mail SABernal@azcc.gov.

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 KRISTIN K. MAYES - Chairman
4 GARY PIERCE
5 PAUL NEWMAN
6 SANDRA D. KENNEDY
7 BOB STUMP

8 IN THE MATTER OF THE APPLICATION OF
9 BENSCH RANCH UTILITIES, LLC FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE SEWER SERVICE.

DOCKET NO. SW-04026A-01-0499

DECISION NO. _____

ORDER

12 Open Meeting
13 October 19 and 20, 2010
14 Phoenix, Arizona

15 **BY THE COMMISSION:**

16 Having considered the entire record herein and being fully advised in the premises, the
17 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

18 **FINDINGS OF FACT**

19 1. On June 21, 2001, Bensch Ranch Utilities, LLC ("Bensch Ranch" or "Company")
20 filed with the Arizona Corporation Commission ("Commission") an application for a Certificate of
21 Convenience and Necessity to provide wastewater service to two subdivisions in Yavapai County,
22 Arizona.

23 2. On August 10, 2004, the Commission issued Decision No. 67180, conditionally
24 granting the Company's application. Decision No. 67180 included specific conditions requiring the
25 Company to secure Commission approval before changing its ownership structure.

26 3. On March 19, 2007, Bensch Ranch filed a Notice of Compliance with Decision No.
27 67180 and Request for Commission Approval. The March 19, 2007, filing requested Commission
28 approval for Dwight L. Zemp, member of Bensch Ranch, to transfer, for the purpose of trust, 100
units of Bensch Ranch to Act III Investments, LLC. The Notice and Request stated that Mr. Zemp
serves as manager of Act III.

 4. On September 7, 2007, the Company filed an Application for Approval of Compliance

1 with Decision No. 67180. In that filing, Bensch Ranch renewed its request for Commission approval
2 for Dwight L. Zemp, member of Bensch Ranch, to transfer, for the purpose of trust, 100 units of
3 Bensch Ranch to Act III Investments, LLC. In addition, the September 7, 2007, filing seeks approval
4 to transfer units of the Company in accordance with a proposed agreement between Bensch Ranch
5 and Pat Carpenter. The September 7, 2007 filing states that Pat Carpenter is the certified operator
6 providing operations and maintenance services to Bensch Ranch. A copy of the proposed agreement
7 was attached to the filing.

8 5. On December 20, 2007, a procedural order was issued directing the Commission's
9 Utilities Division ("Staff") to file a recommendation for Commission action on the September 7,
10 2007 filing.

11 6. On January 25, 2008, Staff filed a recommendation. Staff recommended approval of
12 the agreement between Bensch Ranch and Pat Carpenter. Staff further stated that the notification and
13 filing requirements placed on the Company in Decision No. 67180 were directly related to the
14 involvement with the Company of Mr. Lester Smith. Staff noted that Mr. Smith died in June 2006,
15 and therefore Staff believes the required notification and filing requirements are no longer necessary.
16 Staff recommended that the Commission waive the notification and filing requirements regarding the
17 managing members and ownership structure of Bensch Ranch Utilities, LLC.

18 7. We agree with Staff that following Mr. Smith's death in June 2006, the notification
19 and filing requirements regarding the managing members and ownership structure of the Company
20 are no longer necessary. Decision No. 67180 should be amended to remove those requirements.

21 8. With the notification and filing requirements regarding the managing members and
22 ownership structure of the Company removed from Decision No. 67180, it is not necessary to
23 approve the agreement between the Company and Pat Carpenter pursuant to Decision No. 67180.

24 9. This Decision's amendment of Decision No. 67180 to remove notification and filing
25 requirements regarding the managing members and ownership structure of the Company does not
26 exempt the Company from seeking Commission approval of transactions as otherwise required by
27 law.

28 10. According to the Compliance Section of the Commission's Utilities Division, in

1 accordance with Decision No. 67180, the Company notified Staff, on July 29, 2005, that it served its
2 first customer on June 10, 2005.

3 11. Decision No. 67180 requires the Company to file a rate application no later than three
4 months following the fifth anniversary of the date it begins providing service to its first customer.
5 Therefore the Company was required to file its first rate application by September 10, 2010. The
6 Compliance Section of the Commission's Utilities Division reports that the Company is otherwise in
7 compliance with Utilities Division filing requirements.

8 12. The Company should be ordered to file a rate application no later than November 30,
9 2010.

10 CONCLUSIONS OF LAW

11 1. Bensch Ranch is a public service corporation within the meaning of Article XV of the
12 Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

13 2. The Commission has jurisdiction over Bensch Ranch and the subject matter of the
14 application.

15 3. It is reasonable and in the public interest to amend Decision No. 67180 to remove the
16 requirement that the Company is not allowed to change its ownership structure, including, without
17 limitation, adding new members or changing the managing members, without first obtaining approval
18 from the Commission.

19 4. It is reasonable and in the public interest to amend Decision No. 67180 to remove the
20 requirement that the Company annually file with the Commission an affidavit signed by one of its
21 managing members confirming that it has not changed its membership structure during the previous
22 calendar year.

23 5. It is reasonable and in the public interest to amend Decision No. 67180 to remove the
24 requirement that the Company work with Commission Staff to identify the extent of Mr. Lester
25 Smith's role in the development of Bensch Ranch Estates.

26 6. It is reasonable and in the public interest to amend Decision No. 67180 to remove the
27 requirement that the Company make an annual filing detailing whether it or Pivotal Utility
28 Management has retained Lester Smith as an employee, independent contractor or consultant and

1 whether the Company, Pivotal Utility Management, or any subsequent management company has
2 provided compensation to Lester Smith or any business entity owned or controlled by Lester Smith in
3 the previous calendar year.

4 7. This Decision's amendment of Decision No. 67180 to remove notification and filing
5 requirements regarding the managing members and ownership structure of the Company does not
6 exempt the Company from seeking Commission approval of transactions as otherwise required by
7 law.

8 8. It is reasonable to extend the deadline for the Company to file the required rate case to
9 November 30, 2010.

10 **ORDER**

11 IT IS THEREFORE ORDERED that Decision No. 67180 is hereby amended to remove the
12 requirement that the Company is not allowed to change its ownership structure, including, without
13 limitation, adding new members or changing the managing members, without first obtaining approval
14 from the Commission.

15 IT IS FURTHER ORDERED Decision No. 67180 is hereby amended to remove the
16 requirement that the Company annually file with the Commission an affidavit signed by one of its
17 managing members confirming that it has not changed its membership structure during the previous
18 calendar year.

19 IT IS FURTHER ORDERED Decision No. 67180 is hereby amended to remove the
20 requirement that the Company work with Commission Staff to identify the extent of Mr. Lester
21 Smith's role in the development of Bensch Ranch Estates.

22 IT IS FURTHER ORDERED Decision No. 67180 is hereby amended to remove the
23 requirement that the Company make an annual filing detailing whether it or Pivotal Utility
24 Management has retained Lester Smith as an employee, independent contractor or consultant and
25 whether the Company, Pivotal Utility Management, or any subsequent management company has
26 provided compensation to Lester Smith or any business entity owned or controlled by Lester Smith in
27 the previous calendar year.

28 IT IS FURTHER ORDERED that this Decision's amendment of Decision No. 67180 to

remove notification and filing requirements regarding the managing members and ownership structure of the Company does not exempt the Company from seeking Commission approval of transactions as otherwise required by law.

IT IS FURTHER ORDERED that Bensch Ranch Utilities shall file a rate application no later than November 30, 2010.

IT IS FURTHER ORDERED that all other provisions of Decision No. 67180 remain in effect.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, ERNEST G. JOHNSON, Executive Director of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this ____ day of _____, 2010.

ERNEST G. JOHNSON
EXECUTIVE DIRECTOR

DISSENT _____

DISSENT _____

1 SERVICE LIST FOR: BENSCH RANCH UTILITIES, LLC

2 DOCKET NO.: SW-04026A-01-0499

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